

Appl. No. 10/658,074
Amendment dated September 7, 2005
Reply to Office Action of March 7, 2005

PATENT

REMARKS/ARGUMENTS

Applicants thank the Examiner for the courtesies extended in a telephone conference on August 32, 2005. Claims 1-28 are pending and stand rejected. Claims 1, 5, 7, 8, 10, 11, 15, 19, 21, 22, 24, and 26-28 are presently amended, and claims 4, 6, 18, and 20 are presently canceled. Reconsideration of the claims is respectfully requested. Support for the claim amendments can be found throughout the specification, including, for example, paragraph [0042]. Relatedly, claim 1 is presently amended to include elements of canceled claims 4 and 6, and claim 15 is presently amended to include elements of canceled claims 18 and 20. No new matter is introduced. The paragraph numbering below follows that of the Office Action.

Rejection Under 35 U.S.C. §112

¶1. Claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as allegedly lacking definiteness. Claim 1 is herein amended to replace the term "manifold" with the term "conduit." Withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. §102

¶3. Claims 1-3, 12, 14-25, and 27 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 3,035,820 to Todd et al. ["Todd"]. This rejection is respectfully traversed. According to MPEP 2131, to anticipate a claim, the cited reference must teach every element of the claim. The claims have been amended to expedite prosecution. Nonetheless, Applicants submit that none of the claims, either as amended or prior to this amendment, are anticipated by Todd.

Independent Claim 1

Amended claim 1 is drawn to a mixing device that includes, *inter alia*, a first linkage coupled to the base, the first linkage comprising at least two bars coupled together via at least one *first linkage pivot* joint; and a second linkage coupled to the base, the second linkage comprising at least two bars coupled together via at least one *second linkage pivot* joint.

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Todd describes a mixing apparatus that includes a rack bar member 11 coupled with two actuating arms 19. However, member 11 is not coupled with actuating arms 19 via pivot joints. There is no first linkage pivot joint coupling two bars of a first linkage, and there is no second linkage pivot joint coupling two bars of a second linkage, as presently claimed. Thus, Todd fails to anticipate amended claim 1.

Claims 2-3, 12, and 14 depend, either directly or indirectly, from amended claim 1, and therefore are allowable as depending from an allowable base claim as well as for the novel combination of elements they recite.

At page 3 of the present Office Action, the Examiner asserts that Todd's rack teeth 14 feature reads on a first linkage bar, and that Todd's rack bar 11 feature reads on a second linkage bar. Yet Todd's rack teeth 14 feature is not a separate element from rack bar 11; in fact rack teeth 14 feature is simply a feature of rack bar 11. Applicants submit that it is inappropriate under the law and inconsistent with the clear meaning of the words "first linkage" and "second linkage," as they are used in the claims, to assert that the same part (i.e. rack bar 11 having teeth 14) simultaneously reads on elements of both the claimed first and second linkages. Assuming (for arguments sake only) that Todd's rack teeth 14 (of rack bar 11) could be construed as reading on the claimed first linkage bar, the same rack bar 11 could not properly read on the claimed second linkage bar. The same part cannot logically read on both. The Examiner has not shown that Todd teaches a first linkage and a second linkage as presently claimed.

As noted above, claim 1 is presently amended to include elements of claim 4, which stands rejected under §103. The merits of the rejection of claim 4 are discussed further below under a separate heading.

Independent Claim 15

Amended claim 15 is drawn to a mixing device that includes, *inter alia*, a first and second linkage coupled with the base. The first linkage comprises a first linkage rocker bar pivotally coupled with a first linkage coupler bar via a first linkage rocker-coupler joint, and the second linkage comprises a second linkage rocker bar pivotally coupled with a second linkage coupler bar via a second linkage rocker-coupler joint.

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According to the Office Action at page 2, one may define Todd's gear member 15 as a rocker bar that is pivotally coupled to central axle 18 as a rocker-coupler joint. This interpretation does not read on the presently claimed invention. As noted above, Todd's gear member 15 is pivotally coupled with block 17 via central axle 18. Yet block 17 is fixed with respect to base 10, and therefore is fixed relative to syringe barrels 20. There is no way block 17 could be configured to transmit a force to syringe barrels 20. Thus, block 17 could not possibly read on either of the presently claimed coupler bars. What is more, neither of Todd's rack bar member 11 or actuating arm 19 is pivotally coupled to gear member 15. To the contrary, Todd discloses that gear teeth 16 of gear member 15 mesh with rack teeth 14 of rack bar 11 (see col. 2, lines 33-36) which appears to be a rack and pinion type of gear system. Based on at least the above, Todd fails to teach or disclose the presently claimed first and second linkages and therefore fails to anticipate amended claim 15.

Claims 16-18, 20, 23, and 25 depend, either directly or indirectly, from amended claim 15, and therefore are allowable as depending from an allowable base claim as well as for the novel combination of elements they recite. Claims 19, 21, 22, and 24 are canceled.

Independent Claim 27

Amended claim 27 is drawn to a mixing device that includes, *inter alia*, a first linkage having a first linkage rocker bar coupled with a first linkage coupler bar via at least one first linkage pivot joint; and a second linkage having a second linkage rocker bar coupled with a second linkage coupler bar via at least one second linkage pivot joint.

As noted above with regard to claims 1 and 15, Todd describes a mixing apparatus that includes a rack bar member 11 coupled with two actuating arms 19. However, member 11 is not coupled with actuating arms 19 via pivot joints. Todd fails to disclose a first linkage pivot joint coupling a first linkage rocker bar with a first linkage coupler bar, and a second linkage pivot joint coupling a second linkage rocker bar with a second linkage coupler bar as presently claimed. Withdrawal of this rejection is respectfully requested.

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First Rejection Under 35 U.S.C. §103

¶5. Claims 4-11, 14, and 28 stand rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 3,035,820 to Todd et al. ["Todd"]. This rejection is respectfully traversed.

MPEP §2143 requires that to establish a *prima facie* case of obviousness, among other things, the cited reference including the suggested modifications must teach each of the claim elements. Further, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to the artisan, to modify the reference. Todd fails to meet this test.

Claims 4-11 and 14

As noted above, elements of presently canceled claim 4 are now incorporated into presently amended claim 1. Thus, although claim 4 is canceled, the merits of the §103 rejection as they pertain to that claim are addressed here.

The Examiner alleges, at page 3 of the present Office Action that Todd describes:

- a first linkage that includes (a) actuating arms 19, (b) gear member 15 – operating handle 39, (c) central axle 18, and (d) block 17; and
- a second linkage that includes (a) actuating arms 19, (b) central axle 18, and (c) gear member 15.

Applicants reiterate that it is improper to interpret common elements (e.g., central axle 18 and gear member 15) as simultaneously reading on both the claimed first and second linkages.

Moreover, to the extent Todd discusses a connection between operating handle 39/gear member 15 and block 17, the connection is via central axle 18. Applicants submit that central axle 18 is not a bar component of any linkage as presently claimed.

The Examiner alleges that although Todd discusses only one operating handle 39, it would have been obvious to duplicate this element to arrive at the presently claimed combination of a first linkage and a second linkage, for the stated reason that Todd's device could then more precisely control the amount of material dispensed from syringe barrels 20.

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Applicants disagree. It is unclear how a device having two of Todd's operating handles 39 would allow a user to achieve greater control over the amount of material dispensed from syringe barrels 20, as compared to a device having one operating handle 39.

Claim 6 is cancelled. Claims 5, 7-11, and 14 depend either directly or indirectly, from amended claim 1, and therefore are allowable as depending from an allowable base claim as well as for the nonobvious combination of elements they recite.

Independent Claim 28

Amended claim 28 is drawn to a kit that includes, *inter alia*, a first linkage having at least two bars coupled together via a first linkage pivot joint, and a second linkage having at least two bars coupled together via a second linkage pivot joint. Todd fails to disclose a first linkage pivot joint coupling two bars of a first linkage, and a second linkage pivot joint coupling two bars of a second linkage, as presently claimed. And as noted above with regard to claim 1, there is no obvious modification to Todd that would result in the presently claimed invention. Withdrawal of this rejection is respectfully requested.

Second Rejection Under 35 U.S.C. §103

¶6. Claim 26 stands rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 3,035,820 to Todd et al. ["Todd"] in view of U.S. Patent No. 2,056,931 to Bannister ["Bannister"]. This rejection is respectfully traversed.

MPEP §2143 requires that to establish a *prima facie* case of obviousness, among other things, the cited references when combined must teach or suggest all of the claim elements. The combination of Todd and Bannister fails to meet this test.

Amended claim 26 is drawn to a mixing device that includes, *inter alia*, a first linkage having a first linkage rocker bar coupled with a first linkage coupler bar via at least one first linkage pivot joint; and a second linkage having a second linkage rocker bar coupled with a second linkage coupler bar via at least one second linkage pivot joint.

As noted above, Todd fails to disclose this combination of elements. Bannister discusses an apparatus for emulsifying liquids, but does not teach the first and second linkages as presently claimed, and therefore does not remedy the deficiencies of Todd. Thus, the

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combination of Todd and Bannister fail to teach all the elements of amended claim 26.
Withdrawal of this rejection is respectfully requested.

Third Rejection Under 35 U.S.C. §103

¶7. Claim 13 stands rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 3,035,820 to Todd et al. ["Todd"] in view of U.S. Patent No. 4,350,650 to Cereghini ["Cereghini"]. This rejection is respectfully traversed.

Claim 13 depends from amended claim 1. As noted above, Todd does not anticipate amended claim 1. Cereghini discusses a method for admixing liquids, but does not teach the a first linkage comprising at least two bars coupled together via at least one first linkage pivot joint, and a second linkage coupled to the base, the second linkage comprising at least two bars coupled together via at least one second linkage pivot joint, and therefore does not remedy the deficiencies of Todd. Withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims pending in this Application are in condition for allowance.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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